

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSE MENDEZ-PERAZA

a/k/a Juan Matias

a/k/a Shadow,

Defendant.

CASE NO. 2:17-CR-164(19)

CHIEF JUDGE SARGUS

**UNITED STATES' REQUEST TO HOLD IN ABEYANCE DEFENDANT JOSE
MENDEZ-PERAZA'S MOTION TO CONDUCT HEARING TO DETERMINE
ADMISSIBILITY OF CO-CONSPIRATORS' STATEMENTS**

On May 24, 2018, Defendant Jose Mendez-Peraza (a/k/a Shadow) filed a Motion to Conduct Hearing to Determine Admissibility of Extrajudicial Hearsay Statements Attributed to Alleged Co-Conspirators. (Doc. #391.) In his motion, Mr. Mendez-Peraza asserts that the United States should be required to “produce independent evidence of [the] alleged conspiracy at a pretrial hearing... in order to permit the trial judge to determine the competency and admissibility of extrajudicial hearsay statements attributed to alleged co-conspirators.” (*Id.* at PageID 1287.)

The United States submits that Mr. Mendez-Peraza's motion is premature. The Court has not set a trial date or established a schedule for the filing of pretrial motions (including motions *in limine*). At this relatively early stage of the proceeding, it is not clear which defendants will proceed to trial, in what order, and in what groups. Moreover, Mr. Mendez-Peraza's motion seems to envision a pre-trial hearing during which the United States would be required to

disclose the substance of each anticipated co-conspirator statement and the identity of each declarant/witness, a procedure that would entail the disclosure of highly sensitive *Jencks* material well in advance of what federal law contemplates. 18 U.S.C. § 3500; Fed. R. Crim. P. 16(a)(2) and 26.2.¹

For these reasons, the United States requests that the Court hold the instant motion in abeyance and permit the government to respond in the regular course pursuant to the pretrial motion schedule that the Court ultimately will establish.

Respectfully submitted,

BENJAMIN C. GLASSMAN
United States Attorney

s/ Brian J. Martinez
BRIAN J. MARTINEZ (CA 224587)
Assistant United States Attorney

s/ Jessica H. Kim
JESSICA H. KIM (0087831)
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request to Hold in Abeyance Defendant Jose Mendez-Peraza's Motion to Conduct Hearing to Determine Admissibility of Co-Conspirators' Statements was served this 6th day of June 2018, electronically upon all counsel of record in this matter.

s/ Brian J. Martinez
BRIAN J. MARTINEZ (CA 224587)
Assistant United States Attorney

¹ As will be explained in a future response, neither the Federal Rules of Evidence nor controlling Sixth Circuit authority compels the Court to conduct the sort of pretrial hearing for which Mr. Mendez-Peraza is arguing.